IT 98-0071 GIL 09/02/1998 SUBTRACTION MODIFICATIONS – OTHER RULINGS

General Information Letter. Subtraction modification allowed for portion of wages expense not deducted federally because of empowerment zone credit.

September 2, 1998

Dear:

This is in response to your letter dated August 26, 1998, in which you request a General Information Letter. Department of Revenue ("Department") regulations require that the Department issue only two types of letter rulings, Private Letter Rulings ("PLRs") and General Information Letters ("GILs"). PLRs are issued by the Department in response to specific taxpayer inquiries concerning the application of a tax statute or rule to a particular fact situation. A PLR is binding on the Department, but only as to the taxpayer who is the subject of the request for ruling and only to the extent the facts recited in the PLR are correct and complete. GILs do not constitute statements of agency policy that apply, interpret or prescribe the tax laws and are not binding on the Department. For your general information we have enclosed a copy of 2 Ill. Adm. Code Part 1200 regarding rulings and other information issued by the Department.

Although you have not specifically requested either type of ruling, the information you have provided requires that we respond with a general information letter.

In your request you stated:

For Federal reporting purposes, the amount of empowerment zone employment tax credit (which results from computing 20% of up to $15,000.00 allowable salary for each employee) must also be deducted from total salaries. In effect, the amount of tax credit taken against taxable income is coupled with a deduction from salaries for the same credit.

For Illinois reporting purposes, since the federal empowerment zone employment tax credit is not a recognized credit; it is our position that the deduction from salaries should not be made. Therefore, as shown of Form IL-1120, Part I, line 5f, the subtraction from Illinois taxable income was listed as an increase to salaries because of the nonrecognition of the Federal tax credit. Since there was not a specific line shown on Form IL-1120 for that kind of subtraction, it was listed in line 5f. Regardless of the absence of specific definition for the subtraction in the Illinois Publication #101 for line 5f, substantive determination was made for the reconciliation between Federal taxable income and Illinois taxable income.

Department Analysis

To determine base income, a corporate taxpayer begins with §203(b) of the Illinois Income Tax Act ("IITA"). Within §203(b)(2) several modifications are listed. Section 203(h) then states:

(h) Legislative Intention.

Except as expressly provided by this Section there shall be no

> modifications or limitations on the amounts of income, gain, loss or deduction taken into account in determining gross income, adjusted gross income or taxable income for federal income tax purposes for the taxable year, or in the amount of such items entering into the computation of base income and net income under this Act for such taxable year, whether in respect of property values as of August 1, 1969 or otherwise.

By expressly limiting the modifications to those listed in §203, the Illinois General Assembly stated its intention that any other modifications found in the Internal Revenue Code ("IRC") or elsewhere were not to be used for Illinois income tax purposes. This is because the IITA is designed to utilize portions of the IRC not to merely mimic it.

When developing a tax plan, a taxpayer must therefore examine the provisions of both tax codes before determining what is the most advantageous strategy for the taxpayer's position. In this case, the Illinois legislature did not recognize the federal empowerment zone employment tax credit. Without recognition, the IITA will not allow the credit and so will not produce the same result as will the IRC. Since Form IL-1120, Part I, line 5f specifically states that only one of the listed situations can be used as a subtraction modification on that line, no other situation may apply. Any modifications taken to compute taxable income for federal purposes will be passed on to taxable income for Illinois purposes whether or not that produces an undesirable result.

I hope that this has been helpful to you. If you have additional questions please feel free to contact me at the above address.

Sincerely,

Charles E. Matoesian
Associate Attorney (Income Tax)